

Michael L. Rausch, Esq.
Emily M. McCulloch, Esq.
BROWNING, KALECZYC, BERRY & HOVEN, P.C.
Liberty Center, Ste. 302
9 Third Street North
Great Falls, MT 59401
Telephone: 406.403.0041
Fax: 406.453.1634
mike@bkbh.com
emily@bkbh.com

Attorneys for Relx Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

HERU Spencer,

Plaintiff,

v.

EXPERIAN; EQUIFAX INC;
RELX INC.; TRANSUNION
HOLDING COMPANY INC.;

Defendants.

Case No. CV-23-65-H-BMM-KLD

**DEFENDANT RELX INC.'S
NOTICE OF PAINTIFF'S NON-
OPPOSITION TO RELX'S
MOTION TO DISMISS**

Defendant RELX Inc. ("RELX"), by counsel, hereby submits this Notice of Plaintiff's Non-Opposition to RELX's Motion to Dismiss. *See* Docket No. 11. RELX's Motion to Dismiss for failure to state a claim should be granted as

unopposed. RELX filed its Brief in this Court on September 25, 2023, and received no response from the Plaintiff. RELX then mailed the attached letter notifying Plaintiff that the response deadline had passed, and RELX would agree to a new response deadline of November 2, 2023. Plaintiff filed other responses in this case but did not file any response to RELX's Motion to Dismiss. As such, RELX's Motion to Dismiss should be granted as unopposed.

I. PROCEDURAL HISTORY

On August 21, 2023, *pro se* Plaintiff Heru Spencer ("Plaintiff") filed a claim in the Montana Eighteenth Judicial District Court in Gallatin County which RELX received via mail on August 28, 2023. RELX filed a Motion to Dismiss in state court on September 19, 2023. On the same day, with RELX's consent, Defendant Trans Union removed the claim to this Court. RELX's state court brief was refiled in this Court on September 25, 2023, as a newly filed Motion. The following day, this Court ordered that Plaintiff's response brief to Trans Union's Motion was due on October 16, 2023. Plaintiff failed to respond.

On October 19, 2023, RELX mailed a copy of its Motion to Dismiss to Plaintiff and agreed to allow Plaintiff an additional two weeks until November 2, 2023, to respond to RELX's Motion to Dismiss. *See* Affidavit of Emily M. McCulloch, Ex. A, Letter to Heru Spencer, Oct. 19, 2023. Plaintiff responded to

Trans Union on its Motion to Dismiss but failed to respond to RELX on its Motion. *See* Docket No. 22.

II. ARGUMENT

Pursuant to Local Rule 7.1(c)(1), “failure to file a response brief may be deemed an admission that the motion is well taken.” Responses to Motions to Dismiss must be filed within 21 days from the docket entry. *See* Local Rule 7.1(d)(1). Granting a dismissal is proper if a party fails to respond even if the party is *pro se*. *Ghazali v. Moran*, 46 F. 3d 52, 53 (9th Cir. 1995). *Pro se* litigants are bound by the same rules as all other litigants. *Montana v. Bullock*, No. CV 20-52-M-DLC-KLD, 2020 WL 6121407, at *2 (D. Mont. Sept. 3, 2020).

As Trans Union points out in its Notice of Non-Opposition, Plaintiff is an experienced *pro se* litigator. *See* Docket No. 21. Plaintiff has litigated at least two known lawsuits in Wisconsin as a *pro se* plaintiff which includes motions practice. *See e.g. Spencer, Heru et al v. The Church of the Prismatic Light et al*, 3:22 CV00257 (WMC), Pacer at DNs 19, 23, 26, 34, 26, 41 & 43, (WD Wi. Aug. 18, 2023); *see also* Docket No. 21 at p. 3.

Plaintiff’s history further supports RELX’s argument that Plaintiff had the requisite knowledge to understand a response brief was necessary to defend his case against RELX’s Motion to Dismiss. Plaintiff has now failed to meet two deadlines; the first one required by the rules of procedure, and the second by the voluntary

extension by RELX giving Plaintiff even more time to respond. Plaintiff has not responded to RELX's Motion that was filed over a month ago. Accordingly, for the reasons set forth in RELX's Motion to Dismiss and for his failure to respond, RELX respectfully requests that its Motion to Dismiss for failure to state a claim be granted and that Plaintiff's Complaint against RELX be dismissed with prejudice.

DATED this 3rd day of November, 2023.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By /s/Emily M. McCulloch
Michael L. Rausch, Esq.
Emily M. McCulloch, Esq.

Attorneys for Relx Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of November, 2023, a true copy of the foregoing was served:

Via ECF to the following parties:

Daniel J. Auerbach
BROWNING, KALEZYC, BERRY & HOVEN, P.C.
201 West Railroad St., Suite 300
Missoula, MT 59802

Emily M. Stultz (*Pro Hac Vice*)
SCHUCKIT & ASSOCIATES, P.C.
4545 Northwestern Drive
Zionsvill, IN 46077

Mailed by first-class mail, postage prepaid to the following parties:

Plaintiff Heru Spencer
PO Box 1376
Bozeman, MT 59771

/s/ Emily M. McCulloch
BROWNING, KALECZYC, BERRY & HOVEN, P.C.